IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 591 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIRANAND BHAVANDAS CHAVLA - Applicant(s)

Versus

DILIP GIRDHARILAL PARMAR & 1 - Respondent(s)

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Appearance :

MR DEEPAK P SANCHELA for Applicant(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,
MR HM Prachchhak APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 11/10/2005

ORAL JUDGMENT

1. By filing instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), the petitioner/original accused challenges the judgment and order dated 22.7.2005

rendered in Criminal Appeal No.6 of 2002 by the learned Additional Sessions Judge, District Junagadh at Veraval by which the appeal filed by the petitioner/original accused came to be dismissed and thereby the judgment and order dated 9.4.2002 rendered in Criminal case No.1139 of 2001 by the learned JMFC, Veraval convicting and sentencing the petitioner for commission of the offence under Section 138 of the Negotiable Instruments Act ('the Act' for short) came to be affirmed.

2. It appears from the record of the case that the petitioner and respondent No.1 was having good relations and friendship with each other and since the petitioner was in need of financial assistance in connection with his business, he borrowed an amount of Rs.85,000/- from respondent No.1/original complainant in cash and issued two different cheques one bearing No.26410 dated 19.4.2001 for Rs.70,000/- and another bearing No. 26415 dated 20.4.2001 for Rs.15,000/- in favour of respondent No.1 drawn on the Veraval Mercantile Cooperative Bank Limited, Veraval. On presentation of the said two cheques by respondent No.1 for encashment with his bank i.e., Bank of India, Veraval Branch, on 20.4.2001 they were returned on 21.4.2001 with endorsement “insufficient funds” in the account of the petitioner.

3. Respondent No.1 therefore served statutory notice by RPAD as well as by UPC to the petitioner on 24.4.2001 calling upon him to make payment of Rs.85,000/- against the two dishonoured cheques drawn in his favour. The petitioner neither replied nor complied with the said notice and therefore complaint came to be filed by respondent No.1 against the petitioner for commission of the offence under section 138 of the Act in the court of learned JMFC, Veraval which is registered as Criminal Case No.1139 of 2001.

4. The learned JMFC, Veraval recorded the plea of the petitioner. The petitioner denied the charge for commission of offence under section 138 of the Act and therefore he was put on trial.

5. At the end of the trial, on appreciation, evaluation and critical analysis of the evidence on record, the learned JMFC Veraval came to the conclusion that the offence under section 138 of the Act has been proved against the petitioner and therefore he recorded the finding of guilt against the petitioner and accordingly convicted him for the said offence and sentenced him to suffer RI for a period of one year and imposed fine of

Rs.5,000/- and in default of payment of fine he was ordered to undergo RI for a further period of one month.

6. Aggrieved thereby the petitioner went in appeal before the learned Additional Sessions Judge, Junagadh District, Veraval and the said appeal was registered as Criminal Appeal No.6 of 2002.

7. On reappreciation, reevaluation and reanalysis of the evidence on record, the learned Additional Sessions Judge, District Junagadh at Veraval confirmed the said order passed by the learned JMFC, Veraval convicting and sentencing the petitioner for commission of the offence under section 138 of the Act, which has given rise to the present petition at the instance of the original accused.

8. This Court vide order dated 2.8.2005 (Coram: C.K. Buch, J.) issued Notice by observing that one of the documents produced with the memo of the revision application reveals that the parties have compounded the matter. Offence under section 138 of the Act is compoundable and the petitioner is also released on bail on his executing surety of Rs.5,000/- and personal bond of the like amount on usual terms and conditions during

the pendency of the revision application. It was also further ordered that respondent No.1 Dilip Girdharlal Parmar shall appear in person so that on the next date of hearing so that he can respond to the averments made in the petition regarding the compounding of the offence.

9. Today when the matter is called out, Mr. Deepak Sanchela, learned advocate for the petitioner and Mr. HM Prachchhak, learned APP for respondent No.2 are present whereas respondent No.1/original complainant though duly served has elected not to remain present.

10. Mr. Sanchela, learned advocate for the petitioner has contended that the matter has been settled between the parties outside the Court in view of the fact that the petitioner has already paid Rs.85,000/-, in full and final settlement of the two cheques issued by him which came to be dishonored on account of insufficient funds in his account, to respondent No.1/original complainant and in lieu thereof respondent no.1 has already handed over the said two cheques to the petitioner and in terms of the said compromises arrived at between both the parties outside the court, they have decided to put an end to the criminal litigation which was initiated by respondent

No.1/original complainant. Mr. Sanchela, learned advocate for the petitioner has also produced a compromise deed which is titled as “release deed from liability” to pay the amount of Rs.85,000/- to respondent No.1/original complainant by the petitioner. In the said document both the parties, i.e., the petitioner and respondent No.1, have signed which is notarized by the notary of Junagadh. Therefore he urged that since the matter has been settled amicably between the parties, the conviction and sentence recorded against the petitioner may be quashed and set aside by allowing this revision application.

11. Mr. HM Prachchhak, learned APP for respondent No.2 – State of Gujarat, states that since the matter has been settled between the petitioner/original accused and respondent No.1/original complainant outside the court, appropriate orders may be passed.

12. This Court has considered the submissions advanced by Mr. Sanchela, learned advocate for the petitioner and Mr. HM Prachchhak, learned APP for respondent No.2 – State of Gujarat and both the impugned orders and the subsequent development which has taken place between both the parties i.e., the petitioner/original accused as well

as respondent No.1/original complainant and the compromise deed which is titled as “release deed from liability”.

13. There is no dispute about the factual matrix that the petitioner has borrowed an amount of Rs.85,000/- from respondent No.1/original complainant and in consideration of the said amount, two cheques were issued by the petitioner in favour of respondent No.1 which were dishonoured on presentation by the bank with an endorsement that there was no sufficient funds for honouring the cheques. Therefore the complaint came to be filed against the petitioner by respondent No.1 for commission of the offence under section 138 of the Act. At the end of the trial, the petitioner was convicted and sentenced by the learned JMFC, Veraval and the appeal preferred by the petitioner against the order of conviction and sentence passed by the learned JMFC came to be dismissed by the order passed by the learned Additional sessions Judge, Junagadh District at Veraval by affirming the order passed by the learned JMFC, Veraval.

14. Now there is a latest development between the

parties and as per the development the petitioner has paid Rs.85,000/- to respondent No.1/original complainant which has been accepted by him and as per the said settlement the parties have decided to put an end to the litigation which was initiated by respondent No.1 by filing Criminal Case No.1139 of 2001.

15. It may be noted that offence under section 138 of the Act is now made compoundable by inserting section 147 of the Act.

16. On perusal of the compromise deed which is titled as “release deed from liability”, it is seen that the petitioner/original accused and respondent No.1/original complainant have put their signatures in presence of notary and therefore there is a reason to believe that respondent No.1/original complainant has agreed to compound the offence though he has remained absent before this court and there is no reason for this court to disbelieve the said compromise deed which is titled as “release deed from liability” which is notarized by the notary of Junagadh.

17. In aforesaid view of the matter and since by virtue

of section 147 of the Act, offence under section 138 of the Act is compoundable the offence is compounded and therefore the order passed by the learned JMFC, Veraval convicting and sentencing the petitioner which is affirmed by the learned Additional Sessions Judge, Junagadh District at Veraval, deserves to be quashed and set aside by allowing this revision application in exercise of powers conferred under Section 397 read with Section 401 of the Code.

18. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 9.4.2002 rendered in Criminal Case No.1139 of 2001 by the learned JMFC, Veraval convicting and sentencing the petitioner for commission of offence under section 138 of the Act which is affirmed by the learned Additional Sessions Judge, District Junagadh at Veraval vide order dated 22.7.2005 rendered in Criminal Appeal No.6 of 2002 is hereby quashed and set aside as a consequence thereof the petitioner is acquitted of the offence under section 138 of the Act.

Fine of Rs.5,000/- paid by the petitioner in the court of learned JMFC, Veraval shall be refunded to him upon due verification.

The petitioner is on bail. Therefore, his bail bond shall stand cancelled and surety is discharged.

19. The compromise deed titled as “release deed from liability”, which is duly signed by the petitioner and respondent No.1 and notarized is taken on record of the case.

Rule is made absolute.

(A.M. Kapadia, J.)

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